

DETAILED ACTION
RESPONSE TO ARGUMENTS

35 USC § 103

The rejection of claims 1-3, 7, 11-14, 20-22, 32-35, 38, 42-43, and 57-60 under 35 U.S.C. 103(a) as being unpatentable over Felgner et al. (WO90/11092) in view of Huylebroeck et al. (Gene. June 1988. 66(2): 163-81) and further in view of Townsend et al. (Cell. November 1984; 39(1):13-25) is withdrawn in response to the applicant's claim amendments.

The applicant's claim amendments have been fully considered and are persuasive. The examiner's amendment moves the limitations from claims 61-62 into claim 32. The resulting claim would be non-obvious over the relevant art because as elaborated in the Applicant's remarks (filed 7/6/2010) at page 5, this combination of elements provides unexpectedly superior results over comparable technologies. Claims 1-31, 34-37, 39-41, 44-59 have been cancelled by applicant. Claims 61-62 have been cancelled by Examiner's Amendment.

Therefore, the examiner hereby withdraws the rejection of claims 1-3, 7, 11-14, 20-22, 32-35, 38, 42-43, and 57-60 under 35 U.S.C. 103(a) as being unpatentable over Felgner et al. in view of Huylebroeck et al. and further in view of Townsend et al.

35 USC § 102

The rejection of claims 1, 7, 11, and 14 under 35 U.S.C. 102(b) as being anticipated by Tite et al. (Immunology. 1990; 70:540-546) is withdrawn in response to the applicants claim amendments. The applicant has cancelled claims 1, 7, 11 and 14. Therefore, the rejection is moot. Accordingly, the examiner hereby withdraws the rejection of claims 1, 7, 11, and 14 under 35 U.S.C. 102(b) as being anticipated by Tite et al.

Double Patenting

The rejection of claim 1 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,566,454 is withdrawn in response to the applicant's claim amendments. The applicant has cancelled claim 1. Therefore, the rejection is moot. Accordingly, the examiner hereby withdraws the rejection of claim 1 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,566,454.

Claims 1-3, 7, 11-14, 20-22, 32-35, 38, 42-43 and 57-60 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 10-13 and 22-28 of copending Application No. 11/178,588 (US2006/0014714) are withdrawn due to the applicant's (and Examiner's) claim amendments and the status of later-filed application 11/178,588.

Claims 1-31, 34-37, 39-41, 44-59 have been cancelled by applicant.

In the instant application, the ODP rejection is the only rejection remaining in the earlier filed of the co-pending applications, while the later filed application is rejectable on other grounds. Therefore, the examiner will withdraw the provisional ODP rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. A Terminal disclaimer has NOT been filed in the later-filed application 11/178,588. It is this examiner's opinion that an ODP rejection should be made in application 11/178,588 over the claims of the instant application.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jeannie Wu on 12/15/2010.

The claims have been amended as follows:

32. (Amended) A method of immunizing a vertebrate against an H1N1 influenza virus infection, said method comprising administering parenterally to the vertebrate, prior to infection by an H1N1 influenza virus, a plurality of the same plasmid vectors comprising DNA encoding an H1N1 influenza virus antigen operatively linked to a cytomegalovirus (CMV) promoter, wherein the plasmid vectors are administered with a gene gun, thereby eliciting a protective immune response comprising both a humoral

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and a cell-mediated immune response against the antigen, whereby the vertebrate is protected from disease caused by a subsequent infection by the H1N1 influenza virus, wherein the plasmid vectors are affixed to gold particles, and wherein an amount equivalent to 0.04 µg to 0.4 µg of the plasmid vectors that would be administered to a mouse is administered to the vertebrate.

Claims 61-62 are cancelled.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

The prosecution history provides evidence for allowability.

The Examiner's Amendment moves the limitations from cancelled claims 61-62 into claim 32. The resulting claim would be non-obvious over the relevant art because, as elaborated in the Applicant's remarks (filed 7/6/2010) at page 5, this combination of elements provides unexpectedly superior results over comparable technologies.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Claims 32, 33, 38, 42, 43, 60 and 63 are allowed. Claims 1-31, 34-37, 39-41, 44-59 and 61-62 have been cancelled.

Examiner Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Scott Long** whose telephone number is **571-272-9048**.

The examiner can normally be reached on Monday - Friday, 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Joseph Woitach** can be reached on **571-272-0739**. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SCOTT LONG/
Primary Examiner, Art Unit 1633